UNITED STATES DISTRICT COURT

FOR THE

SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

Z.W. and K.W., minor children, by their parent and next friend MICHAEL W., and MICHAEL W.,	)	**JURY TRIAL REQUESTED**
Plaintiff,	)	Case No.:
vs.	)	
TEXAS DEPARTMENT OF FAMILY & PROTECTIVE SERVICES; TDFPS COMMISSIONER HENRY "HANK" WHITMAN, JR., in his official capacity; DEIANDRA WILLIAMS, TDFPS Investigator, in her official and individual capacities; SUSAN CRUMPTER, TDFPS Supervisor, in her official and individual capacities; LAWRENCE CRAWFORD, TDFPS Conservator caseworker, in his official and individual capacities; SHAUNDRICKA EASLEY, TDFPS Supervisor, in her official and individual capacities.	)	
Defendants		

PLAINTIFF'S COMPLAINT

I. INTRODUCTION

1. This four-count civil rights complaint, brought under 42 U.S.C. § 1983, arises from the actions – and failure to act – of the Texas Department of Family & Protective Services ("TDFPS"), whose investigators, conservator caseworker, and

supervisors failed to protect Ryan Welch through improper investigations and then refused to place Z.W. and K.W., the remaining children, with Michael W., without proper cause. Z.W., K.W., and Michael W. are seeking damages against Defendants for the commission of acts, under color of State Law, that deprived him of rights secured by law of the Constitution of the United States.

2. On October 25, 2014, TDFPS received a referral regarding physical neglect of Z.W., R.W., and K.W. by their mother, Krystal Kellerman. The case was assigned to Defendant Deiandra Williams, a TDFPS Investigator, who not only failed to properly investigate and failed to protect Michael W.'s children but she then lied in her sworn affidavit and then lied under oath. And with the approval of her supervisor, Defendant Susan Crumpter, - and only after the death of R.W. - TDFPS illegally removed Z.W. and K.W. from their father's custody.

3. Michael W. repeatedly asked that his children be placed with him; before R.W.'s death and after. TDFPS continued to refuse placement citing false history and false allegations against Michael W. TDFPS eventually allowed visitation between Michael W. and his children, but only if it was supervised by either an agent of TDFPS or the maternal grandparents. Before imposing such restrictions on Michael W.'s parental rights, TDFPS needed a valid reason and approval from the court. Neither was done until after December 2, 2014. TDFPS continued to restrict Michael W.'s parental rights without there being credible evidence that Michael W. had abused or neglected his children or was imminently about to do so.

4. Finally, on March 30, 2015, with the aid of counsel, Michael W. secured the return of his two remaining children – during the pendency of the suit – and then permanently on October 27, 2015 when the court granted TDFPS's nonsuit.

5. Defendants' actions constitute an illegal seizure of Z.W. and K.W. in violation of the United States Constitution as it concerns the taking of temporary emergency custody over a child, including clear violations of Z.W. and K.W.'s Fourth Amendment rights and Z.W., K.W. and MICHAEL W.'s substantive and procedural due process rights to familial association.

6. As relief for Defendants' actions, Z.W., K.W., and MICHAEL W. seek compensatory and punitive damages, declaratory relief, lost income, and an award of attorneys' fees under 42 U.S.C. §1988, and costs under 28 U.S.C. §1920.

II. JURISDICTION AND VENUE

7. Because this action is brought under 42. U.S.C. § 1983, this Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3).

8. Venue is proper in this judicial district, under 28 U.S.C. § 1391(b), because a substantial portion of the events or omissions giving rise to Plaintiffs' claims occurred in the Southern District of Texas, Houston Division, in that:

   a. Plaintiffs at all relevant times resided in Harris County, Texas;

   b. Defendants are found, or are employed – or at the time of the incidents giving rise to this suit were so employed – in the Southern District of Texas, Houston Division; and

   c. The TDFPS is a governmental agency within Harris County.

9. Defendant Deiandra Williams, was at all times, including October 25, 2014 through March 27, 2015, an employee of TDFPS. She is being sued by Plaintiffs in both her individual and official capacities.

10. Defendant Susan Crumpter, was at all times, including October 25, 2014 through March 27, 2015, an employee of TDFPS. She is being sued by Plaintiffs in both her individual and official capacities.

11. Defendant Lawrence Crawford, was at all times, including October 25, 2014 through March 27, 2015, an employee of TDFPS. He is being sued by Plaintiffs in both his individual and official capacities.

12. Defendant Shauddricka Easley, was at all times, including October 25, 2014 through March 27, 2015, an employee of TDFPS. She is being sued by Plaintiffs in both her individual and official capacities.

13. At all times material to this complaint, each defendant acted or purported to act, under color of the laws of Harris County and the State of Texas.

III. PARTIES

14. Plaintiffs, Z.W. and K.W., are the minor children of Plaintiff Michael W. Z.W. and K.W reside in Harris County, Texas. Under Federal Rule of Civil Procedure 17(c), Z.W. and K.W proceed here by and through their father, Michael W.

15. Plaintiff Michael W., is the father of Z.W. and K.W, and resides in Harris County, Texas.

16. Defendant TDFPS is a public agency run by the State of Texas.

17. Defendant, Henry "Hank" Whitman, Jr., TDFPS Commissioner, is sued for declaratory relief in his official capacity.

18. Defendant Deiandra Williams was, at the time of the incidents giving rise to this complaint, a TDFPS Investigator who was assigned to investigative duties involving R.W., Z.W., K.W., and Michael W. She is sued in her official and individual capacities.

19. Defendant Susan Crumpter was, at the time of the incidents giving rise to this complaint, a TDFPS Supervisor who had supervisory responsibility as to Defendant Williams. Defendant Susan Crumpter was responsible for reviewing and approving the actions of Defendant Williams regarding R.W., Z.W., K.W., and Michael W and she reviewed and approved those actions. She is sued in her official and individual capacities.

20. Defendant Lawrence Crawford was, at the time of the incidents giving rise to this complaint, a TDFPS conservative caseworker, who was assigned conservative duties involving Z.W., K.W., and Michael W. He is sued in his official and individual capacities.

21. Defendant Shauddricka Easley was, at the time of the incidents giving rise to this complaint, a TDFPS Supervisor who had supervisory responsibility as to Defendant Crawford. Defendant Shauddricka Easley was responsible for reviewing and approving the actions of Defendant Crawford regarding Z.W., K.W., and Michael W and she reviewed and approved those actions. She is sued in her official and individual capacities.

22. At all times relevant to this complaint, each of the Defendants acted under color of state law.

IV. STATEMENT OF THE CASE

23. Texas Law and State Policies Regarding the Investigation and Temporary Conservatorship of Children

a. Under Texas law a person having cause to believe that a child's physical or mental health or welfare has been adversely affected by abuse or neglect by any person shall immediately make a report.[1]

b. With assistance from the appropriate state or local law enforcement..., the department shall make a prompt and thorough investigation of a report of child abuse or neglect allegedly committed by a person responsible for a child's care, custody, or welfare.[2] TDFPS policies require that the investigative acts and procedures by the investigator be monitored and approved by an investigative supervisor.

c. The executive commissioner of TDFPS shall assign priorities and prescribe investigative procedures for investigations based on the severity and immediacy of the alleged harm to the child,[3] with the primary purpose of the investigation being the protection of the child.[4]

d. If there is no time to obtain a temporary order, temporary restraining order, or attachment ... before taking possession of a child ..., TDFPS ... may take possession of a child without a court order....(under certain circumstances).[5]

e. At the conclusion of the full adversary hearing, the court shall return the child to the parent – custodial or noncustodial – unless the court finds that

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1/ TEX.FAM.CODE § 261.101.

2/ TEX.FAM.CODE §§ 261.301 and 261.302.

3/ TEX.FAM.CODE § 261.301

4/ *Id.*

5/ TEX. FAM. CODE § 262.104.

there was a danger to the child and that the child needs protection.[6] TDFPS is also required by federal and state law to make "reasonable efforts" to prevent the removable of the children.

f. If TDFPS is appointed temporary conservator of the children, the department is then required to prepare a service plan and a visitation plan for the parents.[7] These plans are to ensure access between the parent and the child as well as providing the parent the steps necessary to have the child returned.[8] TDFPS policies require that the conservatorship caseworkers acts as well as the visitation and services plans developed by the caseworker monitored and approved by a conservatorship supervisor.

V. STATEMENT OF FACTS GIVING RISE TO CLAIMS FOR RELIEF

24. In late September, 2014, Michael W. retained an attorney to file suit against Krystal Kellerman for the custody of his children. On October 15, 2014, the foreign order (as to Z.W.) along with the registration letter was filed with the court. On October 28, 2014, Michael W. filed an Original Petition in Suit Affecting the Parent Child Relationship along with an affidavit that laid out his concerns for the health and safety of his children if they were to remain with their mother, Kellerman.

25. On October 25, 2014, the TDFPS received a referral alleging physical neglect of Z.W., R.W., and K.W. by Kellerman. Both Z.W. and R.W. (ages 7 and 4, respectfully, at the time) had special needs that required frequent attention. K.W.

6/ TEX. FAM. CODE § 262.201.

7/ TEX. FAM. CODE §§ 263.102 and 263.107.

8/ *Id.*

was under the age of 2 and also required frequent attention. Defendant Williams received the case and reviewed the TDFPS file.

26. On October 28, 2014, Defendant Williams interviewed Z.W. at his school. Z.W. made no outcries of abuse or neglect. Defendant Williams then visited Kellerman's home but Kellerman refused to allow Defendant Williams entry. Defendant Williams called 911 for assistance. Michael W. arrived and proceeded to the residence door to talk to Kellerman. He then approached Defendant Williams identifying himself and stating that he was the children's father. He offered Defendant Williams his driver's license and explained that he no longer lived in the house and gave her his current address. Michael W. then talked to his attorney via telephone and asked Defendant Williams if she would talk to the attorney so that she could be told about the steps that were being taken for Michael W. to gain custody of the children. Defendant Williams refused to speak to the attorney stating that she would have to receive a letter of representation before she would speak to any attorney. Michael W. continued to try and convince Kellerman to come out with the children. After the police arrived, and with the help of Michael W., Kellerman came out of the house with the children.

27. On October 29, 2014, Defendant Williams went to Kellerman's home and was again refused entry. Defendant Williams then contacted APS caseworker Hodges (who had an open case with Kellerman listed as the perpetrator) on both October 29 and 30, who stated that she was also refused entry into the home.

28. Defendant Williams contacted Cynthia Wilson at Robinson Elementary to interview her about Z.W. and R.W. Robinson voiced her concerns about Z.W. absences and stated that R.W. had been withdrawn.

29. On November 2, 2014, Defendant Williams made contact with Keri Sloan, a friend of Kellerman. She stated that she had no concerns about the children's health or safely.

30. On November 4, 2014, Defendant Williams drafted her affidavit. In her affidavit she stated in conclusion that, "Due to the children's special needs and one under the age of two, the parent's refusal to cooperate with the agency, the allegation of unsanitary home, extensive criminal history of the father and extensive CPS history for domestic violence, neglectful supervision and physical abuse TDFPS is seeking to request to investigate." Defendant Williams swore to this affidavit under oath and then filed it along with the Petition.

31. A Show Cause hearing was set for November 18, 2014 but was reset because of "no service" to December 2, 2015. Service, however, was initiated on October 23, 2014 and on November 4, 2014 but both requests were cancelled before service was sent. Then service on Kellerman was executed on November 13, 2014 but service on Michael W. was not.

32. On November 22, 2014, Kellerman physically assaults Michael W. and a police report is made. Michael W. notifies Defendant Williams about the incident on November 24, 2014.

33. TDFPS files a Notice of Reset of Show Cause Hearing with the reset date of December 2, 2014.

34. Michael W. talks to Defendant Williams on November 24, 2014 and November 25, 2014 and voices his concerns about the safety of his children and asks if she could visit his home so that the children could be placed with him. Defendant Williams states that she will visit his home on November 25, 2014 – she never went.

35. November 25, 2014. R.W. is shot and killed by Z.W. while the two boys are left unattended by Kellerman for up to three hours.

36. Michael W. learns of the shooting via FaceBook. After rushing to the home – and finding Kellerman – covered in blood – in the back of a police car with Z.W. and K.W , Michael W. goes to Cy-Fair Hospital where he is met by a detective and TDFPS, who refused to allow him to go back to see his son. Michael W. never got to say goodbye to R.W. Instead, he was taken to another room and given a gun shot residue test and questioned. Later that evening, Michael W. asked that his remaining two children be placed with him. Defendant Williams said that the children would not be placed with him because of the prior CPS history. The children were then placed with the maternal grandparents.

37. On December 2, 2014, Michael W. went to court for the Show Cause hearing. The Attorney *ad litem* (AAL) for the children, the Court Appointed Special Advocates (CASA) was appointed as Guardian *ad litem* for the children, and TDFPS was named Temporary Managing Conservator, by agreement, on this date.

38. On December 8, 2014, Michael W. was allowed a 45-minute visit with Z.W. and K.W. The first visit he had since R.W.'s death on November 25, 2014.

39. A permanency conference was held on January 12, 2015 with the primary goal being relative conservatorship and the concurrent goal being relative adoption.

40. On January 16, 2015, K.W. is admitted to the hospital. Michael W. is not contacted.

41. TDFPS notified Michael W. that K.W. is in the hospital.

42. On January 23, 2015, Defendant Crawford files a status report with the court recommending, among other things, that the children's placement with the

maternal grandparents continue and that the department continue as TMC. Defendant Easley approved the status report on January 22, 2015.

43. Defendant Crawford also filed a Family Service Plan for Michael W. on January 23, 2015. In this plan, which was also approved by Defendant Easley, the initial concerns of the department as of January 22, 2015 (as to Michael W.) were: Michael W. was aware that his children receive educational accommodations due to their special needs; however they're developmental and physical needs were not being met as evidenced by the physical condition of the children and the persistent developmental needs. Michael W. allowed his children to remain in conditions that he knew were unsanitary and inappropriate for children. Michael W. allegedly left the home in September 2014. Defendant Crawford and Defendant Easley stated that "prior to the CPS intervention, the lack of protective capacities and supervision of young children, led to the death of R.W."

44. Defendant Crawford, with the approval of Defendant Easley, requested for the court to order Michael W. to (1) complete a Batterer's Intervention and Prevention Program (BIPP); (2) participate in a drug and alcohol assessment due to allegations of alcohol abuse; (3) provide TDFPS with a release for all services; (4) maintain safe and stable housing; (5) participate in a psycho-social envaluation; (6) participate in a parenting class; and (6) maintain contact with his current caseworker.

45. A Status Hearing is set on January 27, 2015. But during this hearing, Defendant Crawford, the CPS Conservatorship Caseworker does not know why the department is asking for a substance abuse assessment; Defendant Crawford does not know why they are asking for domestic violence classes for Michael W.; although Michael W. had completed the psycho-social (as requested), Defendant

Crawford did not know the recommendations, if any; Defendant Crawford had not been to Michael W.'s home; and Michael W. had only seen Z.W. and K.W. once (on December 8, 2014) since November 25, 2014. The court reset this hearing to February 3, 2015.

46. On February 3, 2015 a Status Hearing Order was entered with specific orders for Michael W. to have weekly visits, for one hour, with his children. The Court also ordered that if December's drug tests are negative, that there shall be no requirement for drug related services.

47. Michael W. filed a motion for a Special Status hearing, requesting that his children be placed with him, that was heard on March 24 and 25, 2015. At this hearing, Defendants Williams and Crawford both testified under oath. Defendant Williams testified that during the investigation:

a. Michael W. was uncooperative;

b. Michael W. did not allow the department into the home;

c. Michael W. was violent;

d. Michael W. had a history of domestic violence;

e. that she never contacted Michael W. about viewing his home;

f. that the finding at the close of the investigation as to the allegation that Z.W., R.W. and K.W. were physically neglected by Michael W. was "unable to determine;" and

g. that she did not rule the allegation out because she was instructed – in the presence of her supervisor Defendant Crumpler – that at that time she did not have enough information to do so.

Defendant Crawford testified that during the conservatorship case:

a. the children were not placed with Michael W. because of the domestic violence, because Michael W. did not remove the children from their mother, and because Michael W. did not own up to his role in the children being removed;

b. that he never talked to Michael W. about the department's concerns; and

c. that in Michael W.'s service plan that the department was still requesting him to participate in the BIP Program (even though Michael W. was not the aggressor), participate in a drug and alcohol assessment (even though there was no drug or alcohol issues and the drug tests came back negative); and that they wanted Michael W. to have a safe and stable home (even though no one from the department had gone out to his home...still.

48. At the March 24/25 hearing, the Court name Michael W. and TDFPS joint managing conservators with Michael W. having visitation. The Court also ordered that Michael W.'s family service plan be amended to change the permanency goal to family reunification and that all tasks and services related to drug and alcohol assessments and recommendations be removed.

49. On March 30, after the maternal grandparents refused to allow the children to stay at their home now that Michael W. had visitation, the Court made the following orders: that Michael W. and TDFPS be named JMC with Michael W. having the exclusive right to designate the residence of the children, that the children could not be removed from his home without a court order, and that Michael W.'s family service plan be again amended to now remove any tasks associated with

domestic violence / BIPP program attendance and any subsequent recommendations.

50. On April 9, 2015, the TDFPS completed "A Review of Department of Family and Protective Services Involvement: Child Fatality. This review looked at the acts and the failures to act of the department over the history of this family. Over the prior six years this family had 15 reports and 9 investigations into allegations that R.W. or his siblings had been abused or neglected. The report stated that the majority of those investigations remained incident driven and **either failed to delve into underlying issues in the home, or failed to provide recommended services to the family.** While TDFPS was in the process of seeking legal intervention (but only for participation in services) to address both immediate and ongoing concerns, R.W. died from a gunshot would. The report points out each report and/or investigation and the mistakes that were made by the department. Specifically, the report shows that as early as April, 2013, there were concerns about the storage of firearms away from the children. In July 2013, there were again concerns about firearms in the home. These issues were never addressed.

51. On May 22, 2015, Defendant Crawford filed – with Defendant Easley's approval – a Permanency Plan and Progress Report to the Court. In spite of the evidence and the court's rulings at the March 2015 hearing, Defendant Crawford stated the following:

a. that the department recommends that the suit continue;

b. that the 11/25/14 allegations of physical neglect of Z.W., R.W. and K.W. by Michael W. were "Reason to Believe". And this is curious because the Disposition letter that was prepared in March 2015 stated that Michael W.'s disposition to these allegations was "unable to determine."; and

c. that the department was still wanting Michael W. to participate, and now pay, for a CPS approved BIPP and to provide the caseworker with proof of completion – after the Court ordered that this service be removed from his service plan.

52. On June 16, 2015, Defendant Crawford filed – with Defendant Easley's approval – a Permanency Plan and Progress Report to the Court. In spite of the evidence and the court's rulings at the March 2015 hearing, Defendant Crawford stated the following:

a. that the department recommends that the suit continue;

b. that the 11/25/14 allegations of physical neglect of Z.W., R.W. and K.W. by Michael W. were "Reason to Believe" – still; and

c. that the department was still wanting Michael W. to participate, and now pay, for a CPS approved BIPP and to provide the caseworker with proof of completion – after the Court ordered that this service be removed from his service plan.

53. On September 10, 2015, Defendant Crawford filed – with Defendant Easley's approval – a Permanency Plan and Progress Report to the Court. In spite of the evidence and the court's rulings at the March 2015 hearing, Defendant Crawford stated the following:

a. that the department recommends that the suit continue; and

b. that the 11/25/14 allegations of physical neglect of Z.W., R.W. and K.W. by Michael W. were "Reason to Believe".

54. On October 16, 2015, Defendant Crawford filed – with Defendant Easley's approval – a Permanency Plan and Progress Report to the Court. In spite of the

evidence and the court's rulings at the March 2015 hearing, Defendant Crawford stated the following:

a. that the department recommends that the suit continue; and

b. that the 11/25/14 allegations of physical neglect of Z.W., R.W. and K.W. by Michael W. were "Reason to Believe".

55. On October 27, 2015, TDFPS finally filed a Motion for Nonsuit as to the agency only. The Court granted the motion.

VI. CLAIMS FOR RELIEF

COUNT I: Z.W. and K.W'S 42 U.S.C. § 1983 Claim for Violation of the Fourth Amendment Right Not to Be Subject to an Unreasonable Seizure

56. The Plaintiffs in Count I are Z.W. and K.W.

57. Z.W. and K.W. incorporate paragraphs 1-55 as if fully set forth herein.

58. The Count I Defendants are Defendants Deiandra Williams, Susan Crumpter, Lawrence Crawford, and Shauddricka Easley, sued in their respective individual capacities.

59. Count I Defendants, acting individually and in concert with one another, violated the rights of Z.W. and K.W. under the Fourth Amendment to the United States Constitution (as applicable to the States under the Fourteenth Amendment to the United States Constitution), by directing or engaging in their seizure from the care and custody of their mother, Michael W.: (1) without definite and articulable evidence giving rise to a reasonable suspicion that they had been abused or neglected by their father; and (2) without exigent circumstances being present to justify such action absent a court order.

60. The actions and conduct of the Count I Defendants caused injury to Z.W. and K.W.

61. As relief, Z.W. and K.W. seek a declaratory judgment that the Count I Defendants' actions violated their rights under the Fourth Amendment, and they seek compensatory damages against the Count I Defendants in an amount not less than $50,000 for each Count I Plaintiff, reasonable attorneys' fees pursuant to 42 U.S.C. § 1988, and any other relief, including, but not limited to, an award of costs, as this Court deems appropriate.

62. Given that the Count I Defendants acted intentionally, recklessly and/or with deliberate indifference to the consequences of their actions as set forth above, Z.W. and K.W. seek an award of punitive damages against the Count I Defendants.

COUNT II: Z.W., K.W. and Michael W.'s 42 U.S.C. § 1983 Claim for Violation of the Substantive Due Process Rights to Familial Association Under The U.S. Constitution

63. The Plaintiffs in Count II are Z.W., K.W., and Michael W.

64. Z.W., K.W., and Michael W. incorporate paragraphs 1-62 as if fully set forth herein.

65. The Count II Defendants are Defendants Deiandra Williams, Susan Crumpter, Lawrence Crawford, and Shauddricka Easley, sued in their respective individual capacities.

66. Count II Defendants, acting individually and in concert with one another, violated Z.W., K.W., and Michael W.'s substantive due process rights to familial association, familial autonomy, familial integrity, and family privacy by arbitrarily separating Z.W., K.W., and Michael W. from each other and taking Z.W. and K.W. into State protective custody without possession the requisite definite and articulable evidence giving rise to a reasonable suspicion that Z.W.

and K.W. had been or would be abused or neglected by Michael W. and without exigent circumstances justifying such action absent a court order.

67. Moreover, by restricting Michael W.'s parental rights, and by falsely representing the fact and legal basis upon which these conditions were imposed, the Count II Defendants, acting individually and in concert with one another, further violated Z.W., K.W., and Michael W.'s substantive due process rights to familial association, familial autonomy, familial integrity, and family privacy without the constitutionally requisite evidence required to impose such restrictions.

68. The actions and conduct of the Count II Defendants caused injury to Z.W., K.W., and Michael W.

69. As relief, Z.W., K.W., and Michael W. seek a declaratory judgment that the Count II Defendants' actions violated their rights to substantive due process and they seek compensatory damages against the Count II Defendants in an amount not less than $50,000 for each Plaintiff, reasonable attorneys' fees pursuant to 42 U.S.C. § 1988, and any other relief, including, but not limited to, an award of costs, as this Court deems appropriate.

70. Given that the Count II Defendants acted intentionally, recklessly and/or with deliberate indifference to the consequences of their actions as set forth above, Z.W., K.W., and Michael W. seek an award of punitive damages against the Count II Defendants.

COUNT III: Z.W., K.W. and Michael W.'s 42 U.S.C. § 1983 Claim for Violation of the Procedural Due Process Rights to Familial Associational Rights

71. The Plaintiffs in Count III are Z.W., K.W., and Michael W.

72. Z.W., K.W., and Michael W. incorporate paragraphs 1-70 as if fully set forth herein.

73. The Count III Defendants are Defendants Deiandra Williams, Susan Crumpter, Lawrence Crawford, and Shauddricka Easley, sued in their respective individual capacities.

74. Count II Defendants, acting individually and in concert with one another, violated Z.W., K.W., and Michael W.'s procedural due process rights by taking custody of Z.W. and K.W. even though there were no grounds to believe that Z.W. and K.W. were in imminent danger of abuse or neglect and even though there was ample time to secure a court order prior to taking such action, had a court determined that such action was warranted.

75. Moreover, the Count III Defendants, by restricting Z.W., K.W., and Michael W.'s rights to familial association, familial autonomy, familial integrity, and family privacy, further violated Z.W., K.W., and Michael W.'s procedural due process rights by failing to afford any procedure by which the restrictions could be challenged.

76. The actions and conduct of the Count III Defendants caused injury to Z.W., K.W., and Michael W.

77. As relief, Z.W., K.W., and Michael W. seek a declaratory judgment that the Count III Defendants' actions violated their rights to procedural due process and they seek compensatory damages in an amount of at least $50,000 for each Plaintiff against the Count III Defendants, reasonable attorneys' fees pursuant to 42 U.S.C. § 1988, and any other relief, including, but not limited to, an award of costs, as this Court deems appropriate.

78. Given that the Count III Defendants acted intentionally, recklessly and/or with deliberate indifference to the consequences of their actions as set forth above,

Z.W., K.W., and Michael W. seek an award of punitive damages against the Count III Defendants.

COUNT IV: Z.W., K.W. and Michael W.'s 42 U.S.C. § 1983 Claim for Violation First, Ninth and Fourteenth Amendments to the United States Constitution

79. The Plaintiffs in Count IV are Z.W., K.W., and Michael W.

80. Z.W., K.W., and Michael W. incorporate paragraphs 1-78 as if fully set forth herein.

81. The Count IV Defendants are Defendants Deiandra Williams, Susan Crumpter, Lawrence Crawford, and Shauddricka Easley, sued in their respective individual capacities.

82. A right of family integrity and a right to a permanent family derive from the First Amendment's right of association, the Ninth's Amendment's reservation of rights to the people and the Fourteenth Amendment's substantive due process clause.

83. The foregoing and following actions and inactions of Defendants Deiandra Williams, Susan Crumpter, Lawrence Crawford, and Shauddricka Easley, in their official capacities, constitute a policy or practice that is such a substantial departure from accepted professional judgment, practice, and standards as to demonstrate that Defendants did not base their conduct on such a judgment and/or shock the conscience by constituting deliberate indifference to the constitutionally protected rights of Z.W., K.W., and Michael W. in the following respects:

a. failing to properly investigate a referral;

b. removing a child without taking all reasonable steps to prevent the removal;

c. removing a child based on an improper investigation;

d. misrepresenting the facts in a sworn affidavit;

e. misrepresenting the facts while testifying under oath;

f. recommending, drafting, and/or approving a disposition risk finding of abuse and neglect that has no basis;

g. filing, approving, or implementing a family service plan that has services requested with no basis;

h. failing to perform the conservatorship duties in compliance with Federal and State law as well as the TDFPS policies and procedures; and

i. failing to follow a court order.

84. As a result of Defendants' conduct, Z.W., K.W., and Michael W. have been, and are at further risk of being, harmed and deprived of the liberty interests, privacy interests, and associational rights not to be deprived of a family relationship where safe and appropriate, as conferred on them by the First, Ninth, and Fourteenth Amendments to the United States Constitution.

85. As relief, Z.W., K.W., and Michael W. seek a declaratory judgment that the Count IV Defendants' actions violated their First, Ninth, and Fourteenth Amendment rights and they seek compensatory damages in an amount of at least $50,000 for each Plaintiff against the Count IV Defendants, reasonable attorneys' fees pursuant to 42 U.S.C. § 1988, and any other relief, including, but not limited to, an award of costs, as this Court deems appropriate.

86. Given that the Count IV Defendants acted intentionally, recklessly and/or with deliberate indifference to the consequences of their actions as set forth above, Z.W., K.W., and Michael W. seek an award of punitive damages against the Count IV Defendants.

VII. PLAINTIFFS' ALLEGATIONS

87. Questions of Fact:

a. Determination of the following common question of fact will resolve the following issue that is central to the validity of each one of the Plaintiffs, claims:

i. Does TDFPS's policies and practices regarding the investigation of allegations of abuse and neglect depart from accepted professional judgment, practice, and standards for caseworkers?

ii. Does TDFPS fail to maintain oversight and monitoring of its investigative caseworkers sufficient to ensure compliance with its own licensing standards and accepted professional judgment, practice, and standards?

iii. Does TDFPS's policies and practices regarding the handling of a conservatorship case depart from accepted professional judgment, practice, and standards for caseworkers?

iv. Does TDFPS fail to maintain oversight and monitoring of its conservatorship caseworkers sufficient to ensure compliance with its own licensing standards and accepted professional judgment, practice, and standards?

v. Does TDFPS's policies and practices regarding the testifying and reporting of caseworkers for children in the TDFPS system depart from accepted professional judgment, practice, and standards for caseworkers?

vi. Does TDFPS fail to maintain oversight and monitoring of its testifying caseworkers sufficient to ensure compliance with its own licensing standards and accepted professional judgment, practice, and standards?

vii. Does TDFPS's policies and practices regarding the development of family service plans depart from accepted professional judgment, practice, and standards for caseworkers?

viii. Does TDFPS fail to maintain oversight and monitoring of its development of family service plans sufficient to ensure compliance with its own licensing standards and accepted professional judgment, practice, and standards?

ix. Does TDFPS's policies and practices regarding the closure and finding of risk of abuse and neglect investigations depart from accepted professional judgment, practice, and standards for caseworkers?

x. Does TDFPS fail to maintain oversight and monitoring of its closure and finding of risk of abuse and neglect ensure compliance with its own licensing standards and accepted professional judgment, practice, and standards?

88. Questions of Law:

a. Determination of the following common question of law will resolve the following legal issue that is central to the validity of each one of the Plaintiffs' claims:

i. Does TDFPS's policies and practices regarding the investigation of allegations of abuse and neglect and the investigative caseworkers mean that children and their families have been, and are at continuing risk of being, deprived of the substantive due process rights conferred upon them by the Fourteenth Amendment to the United States Constitution?

ii. Does TDFPS's failure to maintain oversight and monitoring of its investigations and the investigative caseworkers mean that children, in the TDFPS system, and their families have been, and are at continuing risk of being, deprived of the substantive due process rights conferred upon them by the Fourteenth Amendment to the United States Constitution?

iii. Does TDFPS's policies and practices regarding conservatorship cases and the conservatorship caseworkers mean that children and their families have been, and are at continuing risk of being, deprived of the substantive due process rights conferred upon them by the Fourteenth Amendment to the United States Constitution?

iv. Does TDFPS's failure to maintain oversight and monitoring of its conservatorship cases and conservatorship caseworkers mean that children, in the TDFPS system, and their families have been, and are at continuing risk of being, deprived of the substantive due process rights conferred upon them by the Fourteenth Amendment to the United States Constitution?

v. Does TDFPS's policies and practices regarding the testifying and reporting of caseworkers for children in the TDFPS system mean that children and their families have been, and are at continuing risk of being, deprived of the substantive due process rights conferred upon them by the Fourteenth Amendment to the United States Constitution?

vi. Does TDFPS's failure to maintain oversight and monitoring of its testifying caseworkers mean that children, in the TDFPS system, and their families have been, and are at continuing risk of being, deprived of the substantive due process rights conferred upon them by the Fourteenth Amendment to the United States Constitution?

vii. Does TDFPS's policies and practices regarding the development of family service plans mean that children and their families have been, and are at continuing risk of being, deprived of the substantive due process rights conferred upon them by the Fourteenth Amendment to the United States Constitution?

viii. Does TDFPS's failure to maintain oversight and monitoring of its development of family service plans mean that children, in the TDFPS system, and their families have been, and are at continuing risk of being, deprived of the substantive due process rights conferred upon them by the Fourteenth Amendment to the United States Constitution?

ix. Does TDFPS's policies and practices regarding the investigation closures and findings of risk of abuse and neglect mean that children and their families have been, and are at continuing risk of being, deprived of the substantive due process rights conferred upon them by the Fourteenth Amendment to the United States Constitution?

x. Does TDFPS's failure to maintain oversight and monitoring of its investigation closures and findings of risk of abuse and neglect mean that children, in the TDFPS system, and their families have been, and are at continuing risk of being, deprived of the substantive due process rights conferred upon them by the Fourteenth Amendment to the United States Constitution?

VIII. PRAYER FOR RELIEF

89. Plaintiff respectfully requests that this Court:

a. Assert Jurisdiction over this action;

b. Enter judgment in their favor on all counts and award the following relief against Defendants:

i. Declaratory judgment that Defendants violated Z.W., K.W., and Michael W.'S constitutional rights and Michael W.'s statutory rights;

ii. Compensatory damages, exclusive of costs and interests, to with Plaintiffs are found to be entitled;

iii. Punitive damages against Defendants, exclusive of costs and interest, to which Plaintiffs are found to be entitled;

c. An award of interest, costs, and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988, 28 U.S.C. § 1920, 29 U.S.C. § 794A; and Federal Rules of Civil Procedure 23(e) and (h); and

d. Such other relief as this Court deems just and equitable.

DATED: April 10, 2017.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this 10th day of April 2017, I electronically filed the foregoing pleading with the Clerk of the Court using the CM/ECF system, which will send a notice of electronic filing to all CM/ECF participants and that I mailed by United States Postal Service the pleading to all non-Cm/ECF participants.

JULIE KETTERMAN